

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Flohr, et al

Examiner: Ward, Paul V.

Art Unit: 1624

Application No.: 10/779,439

Filed: February 13, 2004

Title: **Nitrogen-Substituted
Hexahydropyrazino[1,2-a] Pyrimidine-
4,7-Dione Derivatives, Processes For
Their Preparation and the Use As
Medicaments**

Response to Non-Final Rejection

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Remarks

This paper is in response to the Office Communication sent 3/1/07.

Claims 1-7 were rejected under 35 U.S.C. §101 in view of copending Application No. 10/779436. The Examiner provisionally rejected Claims 1-7 under the judicially created doctrine of obviousness-double patenting as being unpatentable over claims 1-19 of the '436 application. The Examiner stated that the conflicting claims were not identical but they were not patentably distinct from each other because overlapping subject matter is involved. The Examiner noted that the species in the '436 patent anticipate the present claims.

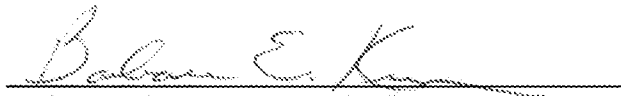
MPEP Section 1504.06 states the following:

If a provisional double patenting rejection (of any type) is the only rejection remaining in two conflicting applications, the examiner should withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the provisional double patenting rejection in the other application which rejection will be converted into a double patenting rejection when the first application issues as a patent.

Since this appears to be the only rejection remaining, Applicants respectfully request that the Examiner withdraw the rejection in the instant application.

Applicants note from page 2 of the Office Action that the Examiner will rejoin Group IV if the claims of Group II are found to be in condition for allowance.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara E. Kurys", is written over a horizontal line.

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